

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 23, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Media Group

Serial No. 75/203,077

Evelyn M. Sommer of Skadden, Arps, Slate, Meagher & Flom
LLP for Media Group.

David H. Stine, Trademark Examining Attorney, Law Office
114 (Mary Frances Bruce, Managing Attorney).

Before Seeherman, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Media Group to
register the mark LOCATOR for "electronic monitors,
comprising radio frequency transmitters and receivers for
ascertaining and monitoring the whereabouts of an

individual whose movements are restricted to a prescribed geographical area."¹

Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the mark LOCATOR, if applied to the goods of the applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm.

Applicant describes its goods as follows:

"[E]lectronic monitors designed to...ensure that certain classes of individuals, small children, mentally impaired and the like whose movements are intended to be restricted to a prescribed area stay within those limits. The monitors in one instance emit a steady signal which weakens as the individual attempts to leave the designated area or alternatively, the emitted signal is intensified as the individual moves toward the outer boundaries of the area." (Brief, p. 3)

Applicant characterizes the function of the goods as follows:

The intent is not a locating function but rather a tracking function, i.e., the parent, guardian or aide attendant is alerted to undesirable movement of the individual. The monitor serves a baby sitting function rather than a locating function. It is for assurance that the person wearing a portion of the

¹ Application Serial No. 75/203,077, filed November 1, 1996, in which applicant alleges a bona fide intention to use the mark in commerce.

monitor is where they are supposed to be within a prescribed location and not intended for locating them once they have left the area or have moved out of range. More specifically, the monitor is "preventative" i.e., before the fact, while the descriptive connotation ascribed by the Examiner is after the fact, locating a lost, strayed, runaway individual." (Brief, p., 3, emphasis in original).

The Examining Attorney contends that the mark LOCATOR "aptly describes both the specific nature and the primary function of the applicant's electronic monitors." (Brief, p. 2). Further, he contends that applicant's monitor indicates when the individual is nearing the boundary of the permitted area; and that although once past the permitted area applicant's monitor does not advise one of the exact location of the monitored individual, nonetheless, the goods clearly perform a "locator" function any time the individual is within the monitored area. The Examining Attorney points out that applicant's goods are identified as electronic monitors ... "for ascertaining ... the whereabouts ..." which relates to a primary purpose of applicant's goods, namely to locate the whereabouts of monitored individuals, at least within the prescribed area.²

² The Examining Attorney referred to dictionary definitions of the terms "locate" and "ascertain"; however, the Examining Attorney did not provide copies thereof.

The Board takes judicial notice (see TBMP §712.01) of the following definitions from The American Heritage Dictionary (1976):

(1) "locate" is defined as "1. To determine or specify the position and boundaries of"; and

(2) "locator" is defined as "one that locates."
The test for determining whether a mark is merely

descriptive is whether the term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark

alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

We agree with the Examining Attorney that this mark immediately and directly conveys information about the primary purpose and function of applicant's goods, i.e., that applicant's electronic monitor indicates whether the monitored person is within the prescribed geographic area.

The ordinary, commonly understood meaning of the word "locator" in the context of applicant's goods immediately informs prospective purchasers that applicant's electronic monitor is intended as a product to assist in monitoring the location of the individual wearing the transmitter. Although the monitor does not pinpoint the exact location of a person who has left the prescribed area, the goods do in fact allow the guardian or attendant to know whether the monitored person is located within a certain area. Thus, when the mark LOCATOR is viewed in the context of applicant's goods, the purchasing public would immediately understand the nature and purpose of the goods. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Omaha National Corporation, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994). Applicant's mark is not

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incongruous, creates no double meaning, and requires no imagination or thought in order to ascertain its meaning in relationship to applicant's identified goods.

Decision: The refusal to register under Section
2(e)(1) is affirmed.

E. J. Seeherman

B. A. Chapman

T. E. Holtzman
Administrative Trademark Judges,
Trademark Trial and Appeal Board